

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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FISCAL IMPACT STATEMENT

LS 6886

BILL NUMBER: HB 1176

NOTE PREPARED: Mar 23, 2009

BILL AMENDED: Mar 23, 2009

SUBJECT: Residential Mortgage Lending Practices.

FIRST AUTHOR: Rep. Riecken

FIRST SPONSOR: Sen. Kruse

BILL STATUS: 2nd Reading - 2nd House

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill contains the following provisions:

No Charge of Prepayment Fee or Penalty- The bill provides that in the case of a first lien mortgage transaction or a home loan that: (1) is closed after June 30, 2009; and (2) has an interest rate that is subject to change during the term of the loan; the creditor may not contract for and may not charge the debtor or borrower a prepayment fee or penalty.

Influencing Appraisals- The bill provides that a person shall not corrupt or improperly influence, or attempt to corrupt or improperly influence, a real estate appraiser or an appraisal. The bill provides that a proposed new notice that is to be: (1) prescribed by the Attorney General's (AG) Homeowner Protection Unit (HPU); and (2) provided by a creditor to a prospective borrower not later than three business days after the creditor's receipt of the borrower's mortgage loan application; must include a statement of a borrower's right under the federal Real Estate Settlement Procedures Act to inspect the HUD-1 or HUD-1A settlement statement during the business day immediately preceding settlement.

Annual Report of MLFPTF- The bill provides that the annual report provided by the Mortgage Lending and Fraud Prevention Task Force (MLFPTF) to the Legislative Council (LC) must include the following information for the most recent state fiscal year: (1) The number of complaints or reports received by the HPU concerning suspected violations of the prohibition against corrupting or improperly influencing a real estate appraiser or an appraisal. (2) A breakdown of the sources of the complaints or reports, based on the complainants' interest in or relationship to the real estate transactions upon which the complaints or reports are based. (3) A description of any disciplinary or enforcement actions taken, or criminal prosecutions pursued, in connection with the complaints or reports received.

Penalties and Enforcement- The bill sets forth certain penalties and enforcement procedures for violations of the provisions concerning real estate appraisals.

Foreclosure Consultant Records- The bill requires a foreclosure consultant to retain all records related to services performed on behalf of a homeowner for at least three years after the termination or conclusion of the foreclosure consultant contract.

Prohibitions- The bill prohibits a person from engaging in, or soliciting to engage in, a real estate or mortgage transaction without a permit or license required by law. The bill prohibits a person from making certain representations with respect to: (1) a mortgage or real estate transaction; or (2) the property that is the subject of the transaction; if the representation is not true and the person knows or reasonably should know that the representation is not true.

Cost of Review Appraisal- The bill provides that a practitioner of a licensed profession who has been subjected to disciplinary sanctions by the board that regulates the profession may be required to pay the costs of any real estate review appraisal obtained in connection with the disciplinary proceedings.

Violation of Statutes by Real Estate Salesperson/Broker- The bill provides that a violation of the statutes concerning: (1) credit service organizations; and (2) mortgage rescue protection fraud; by a person licensed or required to be licensed as a real estate salesperson or broker is a violation of the statute governing the regulation of real estate salespersons and brokers and is subject to certain specified enforcement procedures and sanctions.

Surrender of License to Licensing Board- The bill specifies that the board that regulates a licensed profession may not approve the surrender of a practitioner's license if the AG's office: (1) has filed an administrative complaint concerning the practitioner's license; and (2) opposes the surrender.

Effective Date: July 1, 2009.

Explanation of State Expenditures: *No Charge of Prepayment Fee or Penalty-* Creditors violating this provision could face disciplinary action from the DFI. The DFI could revoke or suspend a violator's license.

Influencing Appraisals- Persons in violation of this provision would commit a Class A misdemeanor and be subject to AG remedies under deceptive consumer sales law. The HPU would prescribe the form for a borrower regarding appraisals. The HPU would be able to prescribe the form within their existing level of resources.

Cost of Review Appraisal- The state could experience a cost savings if the Professional Licensing Agency via the Board of Appraisers could require a licensee to recoup all or some of the complaint investigation costs incurred by the Attorney General (AG). This provision could also increase the workload of a professional licensing board if action had to be taken against more practitioners.

Violation of Statutes by Real Estate Salesperson/Broker & Prohibitions- The Real Estate Commission (REC) could realize an increase in workload if more disciplinary proceedings occur.

Surrender of License to Licensing Board- This provision would increase the expenditures of the AG if additional actions were taken against additional practitioners.

Background Information- The AG reverted \$173,490 at the close of FY 2008, \$0 in FY 2007, \$34,631 in FY 2006, and \$46,010 in FY 2005 to the General Fund. The HPU was appropriated \$63,391 from the state General Fund for FY 2009 operation. The AG expended \$250 to \$500 per appraisal complaint investigation and reviewed 130 appraiser cases during 2008.

Explanation of State Revenues: *Foreclosure Consultant Records-* A foreclosure consultant that fails to retain records as required by the bill could be subject to civil penalties for fraudulent acts if brought by the AG to a court of record. The penalty for an incurable deceptive act under IC 24-5-0.5 is \$500.

No Charge of Prepayment Fee or Penalty- If more licenses are revoked or suspended as a result of this provision, the DFI would see a reduction in renewal fee revenue from creditors that no longer would be allowed to practice in Indiana.

Influencing Appraisals- Violators of this provision would commit a Class A misdemeanor and be subject to civil penalties of not more than \$10,000 per violation. Civil penalties under this provision would be deposited into the Investigative Fund (IF). If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. A court could order a violator to reimburse the state for the AG's reasonable investigation costs.

Violation of Statutes by Real Estate Salesperson/Broker & Prohibitions- A licensed person or person requiring licensure that violates this provision would commit a Class A infraction.

Background Information- *Civil Action Fee Revenue:* If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Explanation of Local Expenditures:

Explanation of Local Revenues: *Civil Action Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected: AG; Professional licensing boards; DFI.

Local Agencies Affected: Trial courts, city and town courts.

Information Sources: Indiana State Budget Agency: *General and Rainy Day Fund Summaries, June 30, 2008*; Auditor's Data; *State of Indiana List of Appropriations Made by the 2007 Indiana General Assembly*

for the Biennium July 1, 2007, to June 30, 2009.

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